

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MELVIN DAVID BREWER PLAINTIFF
V. CIVIL ACTION NO. 5:23-cv-65-DCB-ASH
JAMES BRUMFIELD, ET AL. DEFENDANTS

ORDER ADOPTING THE REPORT AND RECOMMENDATION

THIS MATTER is before the Court on Magistrate Judge Andrew S. Harris's Report and Recommendation, [ECF No. 27] (the "Report"), which addresses Melvin David Brewer ("Plaintiff")'s failure to prosecute a lawsuit that he filed under 42 U.S.C. § 1983. Magistrate Judge Harris issued his Report sua sponte after Plaintiff failed to appear at an Omnibus Hearing and then failed to respond to a Show Cause Order [ECF No. 22]. The Report chronicles repeated occasions when notices and communications that the Court sent to Plaintiff's last-known mailing address at the Pike County Jail were returned as undeliverable. [ECF No. 27] at 1-2. As documented in multiple Court orders and docket entries, Plaintiff failed to comply with the many warnings from the Court that required him to provide notice of his current address or risk dismissal. See [ECF Nos. 10, 8, 6, 3 and 1-1].¹ The Magistrate Judge

¹ Representative of the language in these warnings is: **"It is Plaintiff's responsibility to prosecute this case. Failure to**

concluded that "Brewer no longer wishes to pursue this lawsuit." [ECF No. 27] at 3.

The Court notes that no party has filed an objection to the Report, and the time to do so has expired. Where no party objects to the magistrate judge's report and recommendation and the report contains a warning about the consequences of failing to object (as this report does), the Court is not required to perform a de novo review of the magistrate judge's determination. In such cases, the standard of review is whether the report and recommendation is clearly erroneous or contrary to law. Quinn v. Guerrero, 863 F.3d 353, 358 (5th Cir. 2017) ("... a party is not entitled de novo review after failing to file written objections to the magistrate judge's R&R within a certain period of time."); see also United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989) (the clearly erroneous, abuse of discretion and contrary to law standard of review is appropriate only where there has been no objection to the magistrate's ruling). Finding no clear error in the Report and Recommendation and not finding it contrary to law, the Court agrees with and adopts Magistrate Judge Harris's recommendation.

Accordingly,

advise this Court of a change of address or failure to comply with any Order of this Court will be deemed as a purposeful delay and contumacious act by Plaintiff and may result in the dismissal of this case." [ECF No. 8] at 2 (emphasis in the original).

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation [ECF No. 27] is **ADOPTED** as the findings and conclusions of this Court; and

IT IS FURTHER ORDERED that this case is **DISMISSED** without prejudice for Plaintiff's failure to prosecute and failure to comply with the Court's orders.

A separate judgment will be entered in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED, this 27th day of August 2024.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE